

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
03 JUL 14 AM 10:00

MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

Case No. 8:03-cr-77-T-30TBM

SAMI AMIN AL-ARIAN

ORDER

This cause came on for consideration without oral argument upon the Motion to Stay Order Pertaining to Security Clearances Pending Writ of Prohibition (Dkt. #169). Writs of prohibition are reserved for the really extraordinary causes and are to be issued only when a parties right to relief is clear and undisputed. See In re Wainwright, 678 F.2d 951, 953 (11th Cir. 1982).

This issue is not such an extraordinary cause. As this Court previously stated in its prior order, the Eleventh Circuit has held that the constitutional right to confidentiality is overcome if the government has a legitimate interest that outweighs the individual's privacy interest. See James v. City of Douglasville, 941 F.2d 1539, 1543-44 (11th Cir. 1991); Fajgo v. Coon, 633 F.2d 1172, 1176 (5th Cir. 1981); Plante v. Gonzalez, 575 F.2d 1119, 1134-36 (5th Cir. 1978). Counsel's privacy interest in this case is clearly and substantially outweighed by the government's interest in protecting classified information.

Further, this Court's order was not premature. The government has now moved for a protective order under the Classified Information Procedures Act ("CIPA") and oral


argument has been set on that motion. It is likely that some form of protective order will be entered, because Section 3 of CIPA states that “[u]pon motion of the United States, the court shall issue an order to protect against the disclosure of any classified information . . . disclosed . . . to any defendant in any criminal case . . .” 18 U.S.C. app. 3, § 3 (emphasis added). Further, the Defendants cannot challenge whether information is classified, because the decision whether to designate information as classified is a matter committed to the executive branch and not to the judicial branch. See United States v. Collins, 720 F.2d 1195, 1198 n. 2 (11th Cir. 1983); United States v. Musa, 833 F. Supp. 752, 755 (E.D. Mo. 1993).

Finally, even if this Court or the assigned magistrate allows Al-Arian to represent himself, it may be necessary for him to have standby counsel. Delaying security clearance of counsel may delay discovery in this action. It is, therefore, **ORDERED and ADJUDGED** that:

1. Defendant’s Motion to Stay (Dkt. #169) is **DENIED**.
2. This Court will give Al-Arian’s counsel an additional **TEN (10) DAYS** from the date of this Order to comply with this Court’s prior order and submit a security clearance packet. Counsel shall file a notice prior to or at the expiration of that ten day period, stating whether they have complied with this Court’s Order or showing cause why they should not be removed as counsel for Defendant Al-Arian. Any filing by Al-Arian’s counsel shall be referred for consideration along with Al-Arian’s Motion to Represent Himself (Dkt. #170)

to Magistrate Judge Thomas B. McCoun, III.

DONE and **ORDERED** in Tampa, Florida on this 14 day of July, 2003.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel/Parties of Record

U.S. Magistrate Judge Thomas B. McCoun, III

Date Printed: 07/14/2003

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